

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Bing Wang et al.	Examiner:	Melissa M. Chojnacki
Serial No.:	10/611,365	Group Art Unit:	2164
Filed:	June 30, 2003	Docket No.:	2003P98053US/0051-007001
Title:	System and Method for Updating Network Appliances Using Urgent Update Notifications		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant has reviewed the Office Action mailed on May 16, 2008. Applicant respectfully submits that the §§ 102 and 103 rejections of record in the above-identified patent application are clearly not proper and are without basis as follows, and requests review of these rejections based on the below remarks. Claims 1-2, 4, 7-13, 15, and 17-38 are pending in this Application, of which claims 1, 13, 21, 29, 30, 31, and 35 are independent.

Summary of the Rejections

Claims 1-9 and 19-29 stand rejected under 35 U.S.C. § 101 on the ground that they are directed to non-statutory subject matter.

Claims 1-2, 4, 7, 12-13, 15, 17-18, 20-21, 23, 18-31, 34-34, and 37 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Seshadri et al., U.S. Patent Pub. No. 2004/0002958.

Claims 8-11, 19, 22, 24-27, 32-33, and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Seshadri in view of Lewis et al., U.S. Patent Pub. No. 2004/0116119.

REMARKS

I. § 101 Rejections

The Office Action dated May 16, 2008, rejected claims 1-9 and 19-29 due to the specification's disclosure of carrier waves. Applicant respectfully refers the Panel to page 10 of the Amendment and Response filed on September 12, 2008, disavowing any claims to carrier waves *per se*, and the remarks included therein. Applicant respectfully requests that this disavowal be entered to overcome these rejections, and requests that these rejections be withdrawn.

The Office Action dated May 16, 2008, also rejected claim 21 on the ground that the claim did not describe hardware. Applicant respectfully requests that the amendments included in the Amendment and Response filed on September 12, 2008, reciting, "an update server comprising: an update daemon...a network appliance comprising: an update processor" be entered. Applicant further requests that the rejection of claim 21 be withdrawn based on these amendments to recite hardware.

The Office Action dated May 16, 2008, also rejected claims 29 and 30 on the grounds that they were not limited to any physical articles or objects. Applicant respectfully requests that the amendments included in the Amendment and Response filed on September 12, 2008, reciting, "a computing device," and "an update processor," be entered. Applicant further requests that the rejections of claims 29 and 30 be withdrawn based on these amendments to recite hardware.

II. § 102 Rejections

The Office Action dated May 16, 2008, rejects claims 1-2, 4, 7, 12-13, 15, 17-18, 20-21, 23, 28-31, 34-35, and 37 under 35 U.S.C. § 102(e) as being anticipated by Seshadri. Applicant respectfully refers the Panel to the arguments made on pages 17-19 of the Amendment and Response filed April 30, 2007, as demonstrating why Seshadri does not disclose the elements of these claims.

Applicant further presents the following reasons why Seshadri does not disclose the elements of claim 1, specifically, "sending the UUN to at least one network appliance; receiving a request for the urgent update from the at least one network appliance, the request for the urgent update being sent by the at least one network appliance in response to receiving the UUN; and

providing the urgent update to the at least one network appliance in response to receiving the request for the urgent update.”

The Office Action cites paragraphs [0078-79] and [0604] as disclosing “receiving a request for the urgent update from the at least one network appliance, the request for the urgent update being sent by the at least one network appliance in response to receiving the UUN.” However, these paragraphs describe an event provider which *either* waits for information to be pushed/sent to it, *or* pulls information from a source, but does not pull information in response to a push or notification. These paragraphs do not describe a system in which a first object (server in claims 13 and 21) sends/pushes an urgent update notification to a second object (network appliance in claims 1 and 21), the second object sends a request for the urgent update to the first object in response to receiving the notification, and the first object provides the urgent update in response to receiving the request.

The Office Action cites the abstract, paragraphs [0069], [0077-78], [0118-19], [0446], and [0604] as disclosing “providing the urgent update to the at least one network appliance in response to receiving the request for the urgent update.” These paragraphs also describe *either* a push system *or* a pull system, but not a system on which one object pulls in response to a push or notification. Therefore, Seshadri does not disclose “sending the UUN to at least one network appliance; receiving a request for the urgent update from the at least one network appliance, the request for the urgent update being sent by the at least one network appliance in response to receiving the UUN; and providing the urgent update to the at least one network appliance in response to receiving the request for the urgent update,” as recited in claim 1. Accordingly, Applicant respectfully requests that the Panel withdraw the rejection of claim 1.

For similar reasons, Applicant respectfully submits that Seshadri does not disclose receiving a message which includes an urgent update notification from a server, establishing a connection with the server, and pulling the urgent update from the server, as recited in claim 13. Applicant therefore requests that the Panel withdrawn the rejection of claim 13. Similar arguments apply to the remaining independent claims.

Applicant further submits that the rejection of claim 21 should be withdrawn for similar reasons, and for the additional reason that Seshadri does not disclose periodically obtained (non-urgent) updates in addition to the urgent updates.

Conclusion

Applicant respectfully submits that claims 1-2, 4, 7-13, 15, and 17-38 are in condition for allowance, and earnestly requests notification to that effect. The Panel is invited to telephone Applicant's attorney (208-286-1013) to facilitate prosecution of this Application.

Filed herewith is the fee for a Notice of Appeal. If necessary, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3521, referencing Attorney Docket No. 0051-007001.

Respectfully submitted,

Brake Hughes Bellerman LLP

208-286-1013

Date September 16, 2008

By /Shane A. Kennedy/

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